

## END USER LICENSE AGREEMENT

This End User License Agreement, including the Order Form which by this reference is incorporated herein (this “**Agreement**”), is a binding agreement between ZingBox, Inc., a Delaware corporation (“**ZingBox**”) and the person or entity identified on the Order Form as the user of the ZingBox Solution (“**User**”).

ZINGBOX PROVIDES THE ZINGBOX SOLUTION SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT USER ACCEPTS AND COMPLIES WITH THEM. BY *[CLICKING THE “ACCEPT” BUTTON/CHECKING THE “ACCEPT” BOX ON THE ORDER FORM]* YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT USER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF USER IS A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF USER AND BIND USER TO ITS TERMS. IF USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, ZINGBOX WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO USER AND YOU MUST NOT USE THE ZINGBOX SOLUTION OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR USER’S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT USER DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF THE ZINGBOX SOLUTION.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

“**Documentation**” means user manuals, technical manuals and any other materials provided by ZingBox, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the ZingBox Solution.

“**Order Form**” means the order form filled out and submitted by or on behalf of User, and accepted by ZingBox, for User’s purchase of the subscription for the Zingbox Solution granted under this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Subscription Fees**” means the subscription fees, including all taxes thereon, paid or required to be paid by User for the license granted under this Agreement.

“**Third Party**” means any Person other than User or ZingBox.

“**ZingBox Cloud**” means the ZingBox’s software running in ZingBox’s cloud in order to provide the ZingBox Services.

“**ZingBox Installer**” means the software provided by ZingBox to User that provides implementation and configuration of the ZingBox Solution on User’s network and hardware.

“**ZingBox Services**” means the services that are ordered by User under an Order Form or provided to User under a free trial, and made available online by ZingBox on a Software-as-a-Service (SaaS) basis via the ZingBox Solution.

“**ZingBox Solution**” means the ZingBox Installer, the ZingBox Cloud and other ZingBox components used to provide the ZingBox Services.

2. **ZingBox Solution.**

(a) **Access.** Subject to the terms and conditions of this Agreement, ZingBox will use commercially reasonable efforts to provide User with access to the ZingBox Solution. As part of the registration process, User will identify an administrative user name and password for User’s ZingBox account. ZingBox reserves the right to refuse registration of or cancel passwords it deems inappropriate.

(b) **Scope Of Rights.**

(i) Subject to the terms and conditions of this Agreement, ZingBox grants User the non-exclusive, non-sublicensable, non-transferable, revocable right to authorize User’s agents to access and use the ZingBox Solution.

(ii) User may make a reasonable number of copies of the Documentation (provided that User reproduces all patent, copyright and other proprietary rights notices and other legends of ownership on each such copy, or partial copy, of the Documentation) and use such copies solely in connection with the use of the ZingBox Solution.

(c) **User Responsibilities.**

(i) User shall use the ZingBox Solution only in conformity with this Agreement and the Documentation. User shall be responsible for all use of the ZingBox Solution by User personnel, including compliance of such personnel with this Agreement. Any account or access credentials provided by ZingBox to User for use of the ZingBox Solution shall be deemed ZingBox’s Confidential Information. User shall establish appropriate security measures, consistent with industry standards, to protect the ZingBox Solution from unauthorized use. User shall notify ZingBox immediately of any actual or alleged unauthorized use of the ZingBox Solution. User shall not make any representations or warranties regarding the ZingBox Solution to any Third Party without ZingBox’s prior written consent.

(ii) User will not: (1) except as expressly permitted by any applicable law without the possibility of contractual waiver, attempt to reverse engineer or decompile the ZingBox Solution or any portion thereof, or otherwise attempt to derive or modify the source code of, or any processes, techniques, methods, specifications, protocols, algorithms, interfaces, data structures, or other information embodied or used in, the ZingBox Solution or any portion thereof; (2) modify or otherwise prepare derivative works of the ZingBox Solution or Documentation, or any portion thereof; (3) use the ZingBox Solution (including the processes, methods and know-how embodied therein) or Documentation, or any portion thereof, other than as expressly allowed under this Section 2; (4) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the ZingBox Solution or Documentation, or any portion thereof, to any Third Party, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (5) access or use the ZingBox Solution or Documentation for purposes of competitive analysis thereof or the development, provision or use of a competing software service or product; (6) use the ZingBox Solution and Documentation in violation of any applicable law or regulation; (7) share any account or access credentials for the ZingBox Solution; (8) encumber the ZingBox Solution with any lien or grant a security interest in the ZingBox Solution; (9) publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the ZingBox Solution; (10) remove, alter, or obscure any proprietary rights notices contained in or affixed to the ZingBox Solution; (11) copy, frame, or mirror any part of the ZingBox Solution; (12) access the ZingBox Solution solely for the purposes of monitoring its availability, performance, or functionality; (13) attempt to disrupt, degrade, impair, or violate the integrity or security of the ZingBox Solution, including by executing any form of network monitoring; (14) take any action that imposes, or may impose, at ZingBox's sole discretion, an unreasonable or disproportionately large load on ZingBox's infrastructure; or (15) use the ZingBox Solution in excess of the maximum licensed devices set forth on the Order Form, if any.

(iii) User shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the ZingBox Solution, including modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). ZingBox disclaims all warranties, express or implied, and shall have no liabilities to User, arising from or related to the operation or maintenance of the Equipment or any incompatibilities, faults, defects, or damage attributable thereto.

(d) Suspension or Termination of Access. ZingBox may, directly or indirectly, suspend, terminate or otherwise deny User's access to or use of all or any part of the ZingBox Solution, without incurring any resulting obligation or liability, if: (i) ZingBox receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires ZingBox to do so; or (ii) ZingBox believes, in its good faith and reasonable discretion, that User: (1) has failed to comply with any material term of this Agreement; (2) has accessed or used the ZingBox Solution beyond the scope of the rights granted or for a purpose not authorized under this Agreement; or (3) is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the ZingBox Solution; or

(iii) this Agreement expires or is terminated. This Section 2(d) does not limit any of ZingBox's other rights or remedies whatsoever, including any rights or remedies at law, in equity or under this Agreement.

3. **Third-Party Materials.** The ZingBox Solution includes software, content, data or other materials, including related documentation, that are owned by Persons other than ZingBox and that are provided to User on terms that are in addition to and/or different from those contained in this Agreement (“**Third-Party Licenses**”). A list of all materials included in the ZingBox Solution and provided under Third-Party License is set forth on Schedule A to this Agreement, and the applicable Third-Party Licenses are accessible via links therefrom. User is bound by and shall comply with all Third-Party Licenses. Any breach by User of any Third-Party License is also a breach of this Agreement.

4. **Maintenance and Support.**

(a) **Support.** Subject to Section 4(c) and User's compliance with the terms and conditions of this Agreement, ZingBox will provide User with reasonable technical support services for the ZingBox Solution in accordance with the support level selected on the Order Form.

(b) **Updates.** Maintenance and support services will include provision of such updates, bug fixes, patches and other error corrections (collectively, “**Updates**”) as ZingBox makes generally available free of charge to all Users of the ZingBox Solution then entitled to maintenance and support services. ZingBox may develop and provide Updates in its sole discretion, and User agrees that ZingBox has no obligation to develop any Updates at all or for particular issues. User further agrees that all Updates will be deemed part of the ZingBox Solution, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Maintenance and support services do not include any new version or new release of the ZingBox Solution that ZingBox may issue as a separate or new product, and ZingBox may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

(c) **Exceptions.** ZingBox has no obligation to provide maintenance and support services, including Updates:

(i) for any but the most current version or release of the ZingBox Solution;

(ii) if User is in breach under this Agreement; or

(iii) for the ZingBox Solution if it has been modified other than by ZingBox, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation.

5. **Collection and Use of Information.**

(a) User hereby grants ZingBox a worldwide, non-exclusive, royalty-free, and fully paid-up license to use, reproduce, create derivative works of, distribute, perform, and

display User Data solely in connection with the provision of the services available via the ZingBox Solution to User. Notwithstanding anything to the contrary in this Agreement, User shall not provide any Sensitive Information to ZingBox, whether via the ZingBox Solution or otherwise. ZingBox disclaims all warranties, express or implied, and shall have no liabilities to User, arising from or related to the User Data. “**User Data**” means any data, information, media, content, or materials provided by User to ZingBox through the ZingBox Solution. “**Sensitive Information**” means any information or data under regulatory or contractual handling requirements (e.g. PCI, HIPAA, or state and federal data security laws) including credit card or bank card information and numbers, social security numbers, driver license numbers, passport numbers, government-issued identification numbers, and financial account information. User represents and warrants that it has all rights or licenses necessary to grant ZingBox the license set forth in this Section 5(a).

(b) Notwithstanding anything to the contrary set forth herein, ZingBox will have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the ZingBox Solution and related services, systems and technologies, and ZingBox will be free (during and after the Term) to: (i) use such information and data to improve and enhance the ZingBox Solution and related services and for other development, diagnostic and corrective purposes in connection with the ZingBox Solution, related services and other ZingBox offerings; and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. ZingBox disclaims all warranties, express or implied, and shall have no liabilities to User, arising from or related to such data.

6. **Feedback**. User may from time to time provide suggestions, comments or other feedback to ZingBox, including suggestions for product or service offerings, changes, improvements or new functionality or capabilities (“**Feedback**”). Feedback is entirely voluntarily and ZingBox is not required to treat Feedback as Confidential Information of User and will be free to use Feedback and ideas generated from Feedback in ZingBox’s future product development (including but not limited to improvement of the ZingBox Solution) and otherwise without restriction.

7. **Intellectual Property Rights**. User acknowledges and agrees that the ZingBox Solution and Documentation are provided under license, and not sold, to User. User does not acquire any ownership interest in the ZingBox Solution or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. ZingBox reserves and shall retain its entire right, title and interest in and to the ZingBox Solution and all Intellectual Property Rights arising out of or relating to the ZingBox Solution, except as expressly granted to the User in this Agreement. User shall safeguard all ZingBox Solution (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. User shall promptly notify ZingBox if User becomes aware of any infringement of ZingBox’s intellectual property rights in the ZingBox Solution and fully cooperate with ZingBox, at ZingBox’s sole expense, in any legal action taken by ZingBox to enforce its intellectual property rights.

8. **Payment.**

(a) **Subscription Fees.** As full consideration for (i) the right to access and use ZingBox Solution granted by ZingBox to User hereunder and (ii) the support services provided by ZingBox to User hereunder, User will pay ZingBox the Subscription Fees specified in the Order Form. Any renewal of the subscription or maintenance and support services hereunder shall not be effective until the Subscription Fees for such renewal have been paid in full.

(b) **Taxes.** If any authority imposes on the Subscription Fees a duty, tax (including without limitation sales tax), levy, or fee, excluding those based on ZingBox's net income, then as between the parties, User will be responsible for payment of those amounts. All payments made by User to ZingBox under this Agreement will be made free and clear of any withholding or deduction for taxes. If any such taxes (for example, international withholding taxes) are required to be withheld on any payment, User will pay such additional amounts as are necessary so that the net amount received by ZingBox is equal to the amount then due and payable under this Agreement.

9. **Term and Termination.**

(a) **Term.** This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier terminated as set forth herein (the "**Term**").

(b) **Discontinued Use.** User may terminate this Agreement by ceasing to use and destroying all copies of the ZingBox Solution and Documentation.

(c) **Termination for Breach.** ZingBox may terminate this Agreement, effective upon written notice to User, if User, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after ZingBox provides written notice thereof.

(d) **Termination for Bankruptcy.** ZingBox may terminate this Agreement, effective immediately, if User files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

(e) **Effect of Termination.** Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and User shall cease using and destroy all copies of the ZingBox Solution and Documentation. No expiration or termination shall affect User's obligation to pay all Subscription Fees that may have become due before such expiration or termination, or entitle User to any refund, in each case except as set forth in Section 12(c)(ii). Termination of this Agreement by either party will not act as a waiver of any breach of this Agreement and will not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party will be liable to the other party for damages of any kind solely as a result of terminating this Agreement. Termination of this Agreement by a party will be without

prejudice to any other right or remedy of such party under this Agreement or applicable law.

10. **Warranties and Disclaimers.**

(a) **Warranties.** ZingBox warrants that the ZingBox Solution will perform in material compliance with the Documentation. In the event of a breach of such warranty, User's exclusive remedy, and ZingBox's sole obligation, for any such breach will be, in ZingBox's sole discretion, as follows: (i) ZingBox may correct or provide a workaround, provided the error that caused such breach is reproducible; (ii) ZingBox may replace the defective part of the ZingBox Solution; or (iii) ZingBox may terminate this Agreement by providing User written notice thereof; provided, however, that if ZingBox exercises such termination right, ZingBox will refund to User a pro-rata portion of the Subscription Fees paid by User (with such pro-rata based on the number of days remaining in the Term had ZingBox not so terminated this Agreement).

(b) **Limitations.** Notwithstanding the foregoing, the warranty in Section 10(a) and ZingBox's obligations set forth in Section 10(a) will not apply: (i) to the extent any failure of the ZingBox Solution to comply with such warranty is due to causes that are external to the ZingBox Solution or otherwise beyond ZingBox's reasonable control, including, without limitation, natural disasters, fire, smoke, water, earthquakes, lightening, electrical power fluctuations or failures, or hardware or software not provided by ZingBox; (ii) if the ZingBox Solution has been neglected, misused, or otherwise used in a manner not in compliance with the Documentation or this Agreement; (iii) if there has been a modification or attempted modification of the ZingBox Solution (other than by ZingBox); or (iv) if User has refused or otherwise failed to implement corrections, updates, enhancements, new releases, or other modifications that ZingBox has made available.

(c) **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10(A), ZINGBOX MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZINGBOX HEREUNDER, OR ANY OTHER ASPECT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. ZINGBOX DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION OTHER THAN THOSE SET FORTH ABOVE IN THIS SECTION 10.

11. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) NON-DIRECT DAMAGES. IN NO EVENT WILL ZINGBOX OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, BE LIABLE TO THE USER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ZINGBOX WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) AGGREGATE LIABILITY. IN NO EVENT WILL ZINGBOX'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO ZINGBOX PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE, THAT IS THE SUBJECT OF THE CLAIM.

(c) ACKNOWLEDGMENT. THE PARTIES ACKNOWLEDGE THAT THE SUBSCRIPTION FEES SPECIFIED IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THE FOREGOING LIMITATIONS OF ITS LIABILITY AND THE WARRANTY DISCLAIMERS CONTAINED HEREIN.

## 12. Confidentiality.

(a) Definition. “**Confidential Information**” means any information of one Party (the “**Disclosing Party**”) that is disclosed to the other Party (the “**Receiving Party**”) either (i) in a writing bearing a “confidential,” “proprietary,” or other similar legend; or (ii) orally, provided that such information is identified as confidential at the time of disclosure. Confidential Information of User includes non-public data provided by User to ZingBox to enable the provision of the services performed by the ZingBox Solution and related services. Regardless of whether or not so marked or identified, User acknowledges that the ZingBox Solution, the Documentation, and all technical information pertaining to any of the foregoing is the Confidential Information of ZingBox. The Receiving Party agrees to protect against the unauthorized use or disclosure of Confidential Information of the Disclosing Party using the same degree of care, but no less than a reasonable degree of



care, that it uses to protect its most valuable confidential and proprietary information. Notwithstanding the foregoing, Confidential Information does not include information that: (w) is already known by the Receiving Party at the time of disclosure; (x) becomes, through no act or fault of the Receiving Party, publicly known; (y) is received by the Receiving Party without restriction on the Receiving Party's disclosure or use, from a Third Party which itself had no obligation to keep such information confidential; or (z) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party.

(b) Restrictions. The Receiving Party will hold the Disclosing Party's Confidential Information in confidence and will not disclose such Confidential Information to third parties, nor use such Confidential Information, for any purposes other than the purposes of this Agreement. When disclosing the Disclosing Party's Confidential Information to a Third Party in a manner permitted by the foregoing sentence, the Receiving Party will ensure that such Third Party receives such Confidential Information subject to written confidentiality restrictions no less restrictive than those set forth in this Section 12.

(c) Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required to be disclosed by a court or governmental agency pursuant to a statute, regulation, or valid order; provided, however, that (i) the Receiving Party first notifies the Disclosing Party and gives the Disclosing Party the opportunity to seek a protective order, or to contest such required disclosure and (ii) the Receiving Party will continue to treat the Confidential Information disclosed hereunder by the Disclosing Party as Confidential Information of the Disclosing Party for all other purposes.

### 13. Miscellaneous.

(a) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the County of Santa Clara, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

(b) Force Majeure. ZingBox shall not be in default hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage,

fluctuations or non-availability of electrical power, heat, light, air conditioning or User equipment, loss and destruction of property or any other circumstances or causes beyond ZingBox's reasonable control.

(c) Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 13(c)).

(d) Entire Agreement. This Agreement, together with the Order Form, all schedules attached hereto and all other documents that are incorporated by reference herein and the Privacy Policy [[https://www.zingbox.com/wp-content/uploads/2017/06/Privacy\\_Policy.pdf](https://www.zingbox.com/wp-content/uploads/2017/06/Privacy_Policy.pdf)], constitutes the sole and entire agreement between User and ZingBox with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. ZingBox rejects any additional or differing terms proposed by User, including, but not limited to those contained in User's purchase order (PO), acceptance, website or any other document and all such terms are of no force and effect.

(e) Assignment. User shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without ZingBox's prior written consent, which consent ZingBox may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving User (regardless of whether User is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which ZingBox's prior written consent is required. No delegation or other transfer will relieve User of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 13(e) is void. ZingBox may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without User's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(g) Amendment; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(h) Severability and Limitations of Actions. In the event that any provision of this Agreement or the application thereof to any person or in any circumstances will be determined to be invalid, unlawful, or unenforceable to any extent, the remainder of this Agreement and its application to other persons will not be affected thereby, and the remaining provisions of this Agreement will continue to be valid and may be enforced to the fullest extent permitted by law and the parties agree in such event to substitute forthwith the invalid, unlawful or unenforceable provision by such effective provision as will most closely correspond with the legal and economic contents of the provision(s) so voided.

(i) Interpretation. For purposes of this Agreement, (i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Schedules refer to the Sections of, and Schedules attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(j) Independent Contractors. Each party will perform their obligations under this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create or imply a joint venture, partnership, principal-agent, fiduciary or employment relationship between the parties. Neither party will take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other party, and will have no power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on the other party’s behalf or in its name, nor will such party represent to any one that it has such power or authority.

(k) Publicity. ZingBox may identify User as a customer in press releases, on ZingBox’s website and in other public statements issued by ZingBox.

(l) Export Regulation. The ZingBox Solution and Documentation may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. The User shall not, directly or indirectly, export, re-export or release the ZingBox Solution or Documentation to, or make the ZingBox Solution or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. The User shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the ZingBox Solution or Documentation available outside the U.S.

(m) US Government Rights. The ZingBox Solution is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the User is the US Government or any contractor therefor, User shall receive only those rights with respect to the ZingBox Solution and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government Users and their contractors.

(n) No Indemnification. ZingBox will not indemnify, defend or hold harmless User against any loss, liability, expenses or costs. The terms of this section are non-revocable and shall survive the termination of this Agreement.

(o) Free Trial. If ZingBox provides User with access to the ZingBox Solution on a trial, courtesy or evaluation basis or the ZingBox Solution is labeled as “Pre-Release,” “Limited Release,” “Beta” or otherwise described as experimental, untested, or not fully functional (“**Free Software**”), then this section of the Agreement shall also apply. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supersede such other term(s) and condition(s) with respect to such Free Software, but only to the extent necessary to resolve the conflict. All Free Software is provided as is, without any warranty, indemnity, maintenance or support, express or implied, subject to any statutory rights that cannot be excluded or limited by law. Accordingly, you acknowledge that any use of the Free Software is entirely at your own risk

(p) Changes. Notwithstanding Section 13(g), ZingBox reserves the right to make changes to any or all parts of this Agreement. User may view the most recent version of this Agreement at: [<https://www.zingbox.com/wp-content/uploads/2017/06/EULA.pdf>].

**SCHEDULE A**  
**THIRD PARTY SOFTWARE**